

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

LANDWORKS CREATIONS, LLC.

Plaintiff

v.

UNITED STATES FIDELITY AND GUARANTY)
COMPANY and)
LOVETT-SILVERMAN CONSTRUCTION)
CONSULTANTS, INC.)

Defendants

C.A. NO.05-CV-40072 FDS

SUPPLEMENTAL STATEMENT OF FACTS OF THE DEFENDANT LOVETT-SILVERMAN CONSTRUCTION CONSULTANTS, INC., IN SUPPORT OF ITS REPLY TO LANDWORKS CREATIONS, LLC'S OPPOSITION TO ITS MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Defendant Lovett-Silverman Construction Consultants, Inc. ("Lovett-Silverman") respectfully submit this Statement of Facts in Support of its Motion for Summary Judgment.

II. SUPPLEMENTAL STATEMENT OF FACTS

1. Mr. Bullock participated in site visit with Bob Cox, "a person that works for the Town of Shrewsbury", where they discussed Landworks' scope of work. Depo. of Robert Bullock at 64:3-12; 101:14-102:4, attached hereto as **Exhibit B**.

2. Mr. Matthews admitted at his deposition that "Mr. Bullock was the only one [at Lovett-Silverman] that I had contact with. He was the only one at that time who spoke to me or communicated to me in e-mail also." Depo. of Neal Matthews, Day One, at 99:10-13, attached hereto as **Exhibit C**.

3. Mr. Matthews further admitted that the body of e-mail correspondence between himself, Lovett-Silverman employees and consultants, and USF&G employees comprised the basis for Landworks' claims against Lovett-Silverman. Depo. of Neal Matthews, Day One, at 75-100:7-16, attached hereto as **Exhibit C**.

4. Russell Fuller, Esquire, of USF&G, wrote to Mr. Bullock and stated, "[p]lease let Mr. Matthews know we are willing to continue to discuss this with him, but in light of the lawsuit, discussion should go through the attorneys." E-Mail of Russell Fuller, Esquire to Robert Bullock, August 19, 2005 at 4:25 p.m., attached hereto at **Exhibit A**.

Respectfully submitted,

LOVETT-SILVERMAN
CONSTRUCTION CONSULTANTS, INC.
By its attorneys,

/s/ Julie A. Ciollo

David J. Hatem, PC (BBO #225700)

Marianne E. Brown (BBO #668237)

Julie A. Ciollo (BBO #666080)

DONOVAN HATEM LLP

Two Seaport Lane

Boston, MA 02210

(617) 406-4500

jciollo@donovanhatem.com

Dated: April 27, 2007

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants on April 27, 2007.

/s/ Julie A. Ciollo
Julie A. Ciollo

EXHIBIT A

Julie Ciollo

From: Robert Bullock [rbullock@lovett-silverman.com]

Sent: Wednesday, August 17, 2005 2:33 PM

To: 'Al Falango'

Subject: Shrewsbury - Landworks

The president of Landworks just called me and expressed an interest in being ratified. I told him he will have to drop his law suit, but welcomed this idea and I forwarded the requirements for ratification and my contact information

4/20/2007

Julie Ciollo

From: Peters Jr,James Michael [JPETERS@stpaultravelers.com]
Sent: Thursday, August 18, 2005 10:49 AM
To: Al Falango; Fuller,Russell W
Cc: Robert Bullock; bcarver@hinshawlaw.com; Werner,William R
Subject: RE: Shrewsbury - Landworks

We are presently a defendant in a legal action brought by Landworks against Jackson Construction and USF&G. The underlying issue is a dispute regarding their sitework subcontract on the Shrewsbury Middle School project. If Landworks is interested in settling that legal action and resuming their work, they should communicate that desire through their counsel to Brad Carver who represents USF&G in that litigation.

By copy of this email to Brad Carver, I am giving him notice of this issue.

James M. Peters, Jr.
St Paul Travelers Bond Claim
One Tower Square - 4 PB
Hartford, CT 06183

Tel: (860) 954-6497
Fax: (860) 277-5722
Email: james.m.petersjr@stpaultravelers.com

-----Original Message-----

From: Al Falango [mailto:afalango@lovet-silverman.com]
Sent: Wednesday, August 17, 2005 3:00 PM
To: Fuller,Russell W; Peters Jr,James Michael
Cc: 'Robert Bullock'
Subject: Shrewsbury - Landworks

Russ

The president of Landworks called LSCC and expressed an interest in being ratified. Should we pursue this guy, I know you have issues with him.

Julie Ciollo

From: Robert Bullock [rbullock@lovett-silverman.com]
Sent: Friday, August 19, 2005 8:09 AM
To: 'Neal H. Matthews'
Subject: RE: Shrewsbury Middle School - Data required for Financial Analysis

Neal,

We checked with the Surety and we were told that we can not deal with Landworks while the legal case is pending.

Bob Bullock
Lovett Silverman Construction Consultants Inc.

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From: Neal H. Matthews [mailto:Lonewolf@maine.rr.com]
Sent: Thursday, August 18, 2005 3:35 PM
To: Robert Bullock
Subject: Re: Shrewsbury Middle School - Data required for Financial Analysis

Either day will be find to meet. Let me know what day will be best for you and I'll be down at 9:00am. I assume the best place would be at the school so we can go over what has to be done to finish the work.

Thank you,
Neal H. Matthews

----- Original Message -----

From: Robert Bullock
To: 'Neal H. Matthews'
Sent: Thursday, August 18, 2005 9:10 AM
Subject: RE: Shrewsbury Middle School - Data required for Financial Analysis

Neal,
I can meet with you Tuesday or Wednesday of next week. Let me know if 9:00 AM either day will work for you.

Robert J. Bullock, PE
Lovett Silverman Construction Consultants Inc.

Phone: 717-796-9595
Fax: 717-766-1715
Cell: 717-422-7518

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3/22/2007

Julie Ciollo

From: Fuller, Russell W [RFULLER@stpaultravelers.com]
Sent: Friday, August 19, 2005 4:25 PM
To: Robert Bullock
Subject: RE: Shrewsbury Middle School - Data required for Financial Analysis

Bob:

Please let Mr. Matthews know that we are willing to continue to discuss this with him, but in light of the lawsuit, discussion should go through the attorneys. I think that is what we are trying to convey. Thanks.

-----Original Message-----

From: Robert Bullock [mailto:rbullock@lovett-silverman.com]
Sent: Friday, August 19, 2005 2:30 PM
To: Fuller, Russell W; Peters Jr, James Michael
Cc: 'Al Falango'; 'Tony Lardaro'
Subject: FW: Shrewsbury Middle School - Data required for Financial Analysis

Gentlemen,

Attached is the email thread summarizing my discussions with Mr. Matthews of Landworks. The event that initiated this was a call from Matthews to my cell phone after he had spoken to someone at the Town of Shrewsbury on Wednesday 08/17/05.

Robert Bullock, PE
Lovett Silverman Construction Consultants Inc.
19 Goldenrod Drive
Carlisle, PA 17013

Phone: 717-796-9595
Fax: 717-766-1715
Cell: 717-422-7518

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From: Neal H. Matthews [mailto:Lonewolf@maine.rr.com]
Sent: Friday, August 19, 2005 9:45 AM
To: Robert Bullock
Cc: Rob N. Meltzer
Subject: Re: Shrewsbury Middle School - Data required for Financial Analysis

Dear Mr. Bullock,

I'm sorry to hear that. I felt that I could have provided information and service to St. Paul that would have saved them expense in completing the project. There were many things in the actions of Town of Shrewsbury and Jackson Construction Company that should have been corrected before the project moved forward. It is unfortunate that the surety did not respond to my and my lawyers numerous inquiries concerning Jackson's refusal to pay for work that was requested and completed. Much of the work was billable to the Town of Shrewsbury. *They had requested the work to be done and as of my last contact with them, they had not been billed by Jackson or the surety for the work.* I guess that when

4/26/2007

Julie Ciollo

From: Robert Bullock [rbullock@lovett-silverman.com]
Sent: Friday, August 19, 2005 4:36 PM
To: 'Neal H. Matthews'
Cc: 'Fuller,Russell W'
Subject: RE: Shrewsbury Middle School - Data required for Financial Analysis

Neal,

We are willing to continue to discuss this with you, but in light of the lawsuit, discussion should go through the attorneys.

Thanks.
Bob Bullock
Lovett Silverman Construction Consultants Inc.

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From: Neal H. Matthews [mailto:Lonewolf@maine.rr.com]
Sent: Friday, August 19, 2005 9:45 AM
To: Robert Bullock
Cc: Rob N. Meltzer
Subject: Re: Shrewsbury Middle School - Data required for Financial Analysis

Dear Mr. Bullock,

I'm sorry to hear that. I felt that I could have provided information and service to St. Paul that would have saved them expense in completing the project. There were many things in the actions of Town of Shrewsbury and Jackson Construction Company that should have been corrected before the project moved forward. It is unfortunate that the surety did not respond to my and my lawyers numerous inquiries concerning Jackson's refusal to pay for work that was requested and completed. Much of the work was billable to the Town of Shrewsbury. They had requested the work to be done and as of my last contact with them, they had not been billed by Jackson or the surety for the work. I guess that when people become entrenched in certain mind sets they can not see the benefit of just talking to resolve problems. The Town of Shrewsbury would have no incentive to have me come back as they will benefit from having work completed in which they think they will not have to pay for. As for St. Paul continuing to not address my legitimate concerns, it shows me they still are acting in bad faith. It's sad that individuals can not step back from the overall picture and have a meaningful discussion based on respect of each other's positions.

Respectfully,
Neal H. Matthews

----- Original Message -----

From: Robert Bullock
To: 'Neal H. Matthews'
Sent: Friday, August 19, 2005 8:09 AM
Subject: RE: Shrewsbury Middle School - Data required for Financial Analysis

3/22/2007

EXHIBIT B

1 Meritz. You reference a conversation with Bob Cox
2 or it says you recall Bob Cox. Who is Bob Cox?

3 A. Bob Cox is a person that works for the Town
4 of Shrewsbury.

5 Q. This conversation says, "I recall Bob Cox
6 saying..." Where did that conversation take place?

7 A. This took place when I walked around the
8 job site.

9 Q. When was that?

10 A. In July.

11 Q. Who else was walking with you when you --

12 A. Just Bob and I.

13 Q. What did he say?

14 A. He said that the north and east perimeter
15 of the baseball field may be at the wrong slope.

16 Q. Was it identified as to whether or not the
17 grading, whether it was at the wrong slope and did
18 require some additional grading?

19 A. When?

20 Q. At any time.

21 A. I don't know.

22 Q. You referenced there also
23 "Jackson/Landworks may have already performed the
24 survey." Do you see that reference?

1 within Landworks' subcontract with Jackson?

2 A. If this includes the rubber track, the
3 rubber track is not part of Landworks' contract.

4 Q. Do you know how much of that 185?

5 A. I don't know.

6 Q. There is a section for G&R. Comes out to
7 only about 1,300, but concrete form for head walls?

8 A. Yes.

9 Q. Would you state that is Landworks' scope of
10 work?

11 A. Yes.

12 Q. Based upon what?

13 A. I don't recall.

14 Q. Then we have electrical work at the
15 football field, 12,450. Would you tell me why that
16 would be within Landworks' scope?

17 A. It was removed under site demolition.

18 Q. Under site demolition, that belonged to
19 Landworks?

20 A. If it was damaged by them.

21 Q. Was it damaged by them?

22 A. During this site demolition. My
23 investigation showed it was.

24 Q. What investigation was that?

1 A. Discussions.

2 Q. With whom?

3 A. Bob Cox when I walked around with him in
4 July.

5 Q. What did he tell you?

6 A. I don't recall exactly, but that's why I
7 listed it as Landworks.

8 Q. You don't recall exactly what he told you?

9 A. No.

10 Q. Your understanding was based upon some July
11 conversation with Bob Cox, Landworks damaged
12 electrical?

13 A. Yes.

14 Q. Did Bob Cox point out something and say,
15 Landworks damaged this?

16 A. Yes.

17 Q. Specifically he mentioned Landworks?

18 A. I don't recall.

19 Q. Did he say site guy or Landworks?

20 A. I don't recall.

21 Q. What exactly were you looking at that he
22 claimed was broken?

23 A. At that point we were looking around the
24 track area where the site demolition took place.

EXHIBIT C

1 date of that, but it was first of March?

2 Q. Of 2005?

3 A. Of 2005. First of March in 2005, end of
4 February, first of March.

5 MR. HIPPE: The 17th of March.

6 Q. The 17th of March. The record will reflect
7 when it was. But approximately in March of 2005?

8 A. Yes.

9 Q. Had you ever filed suit before on a job
10 where you're working?

11 A. No.

12 Q. So what happened next?

13 A. In August I would visit the site from time
14 to time, and there didn't seem to be much going on
15 from that time frame of March until into the summer
16 outside the building.

17 And then in August I got a telephone call
18 from the clerk of the works that -- and he said to
19 me, he's like, "So I hear you're going to be back to
20 work next week." And I was like, "Well, that's news
21 to me. It's good news, but what have you heard?"

22 And he told me that Lovett Silverman had
23 told the Town in the meeting that the site
24 contractor was going to be back on site the

1 USF&G?

2 A. I'm saying Lovett Silverman prepared the
3 counterclaim to give to USF&G so that they could
4 file a counterclaim against me. And there are items
5 in there that -- first of all, it appears that it
6 has been hastily put together, in that there's a
7 deadline to meet, and it's more important to meet
8 that deadline than it is to get it right, and there
9 are items in there that are clearly not my work.
10 And --

11 Q. Like what, for example?

12 A. It appears to me, in the counterclaim, that
13 the track is in there, and the track being all the
14 track. And you have seen the change order or the
15 letter of intent from Jackson about the scope
16 dealing with the removal of the old asphalt and the
17 overlay of the track, but then also the rubberized
18 surface.

19 I mean, there's going to be -- I figure
20 there's going to be an argument where they're going
21 to say that I owed the pavement on the track, and I
22 am going to that I did not. There was never any
23 doubt that there was always a contractor hired for
24 doing the work for putting down the surface on the

1 that time. Part of them were billing records and
2 some other items.

3 And I told him that I could provide him
4 that, and I gave him my e-mail address, and asked
5 him -- or he asked me for my e-mail address, because
6 I asked him if he would fax me a copy of what his
7 requirements were so that I could make sure I got
8 everything to him quickly, and he asked me if I had
9 an e-mail address, and I told him that I did. He
10 said, "Because I am on the road, it would be easier
11 for me to just e-mail it to you," and I told him
12 that would be fine.

13 Then the conversation turned to the track,
14 and he asked me at that time, he was like, "What is
15 your understanding of the track work?" And I'm
16 like, "My understanding of the track work is that
17 Standen had contracted with Tracklite to do the
18 track work." And he told me that that was his
19 understanding of it also.

20 And he thanked me for calling him, and it
21 was a pleasant conversation, and I can remember that
22 I was pretty upbeat about it, because after -- you
23 know, from basically November the year before until
24 August, there had been really nothing forthcoming

1 from anyone, and this was the first person that I
2 had actually been able to speak to about it.

3 And so, when I got back to the office, I
4 checked my e-mail. He had sent his requirements.
5 And then I -- as I started pulling everything out,
6 he had asked me to fax it to him, and I was, like,
7 thinking to myself that it was an awful lot of
8 documents, and I get a little bit paranoid when I
9 start faxing so many documents through a fax
10 machine, because normally halfway through it jams or
11 whatever, and I'm not certain what has been sent or
12 not.

13 So I wrote him back an e-mail and asked
14 him, since there was a lot of documents, if I could
15 just meet him at the site and give him the
16 documents, and at that time go over with him any
17 questions that he may have that he might find
18 beneficial in helping him process this, and that I
19 can meet him any time on the site.

20 He wrote me back on e-mail and said that --
21 and I believe the next e-mail he wrote me back was
22 that he could meet me like two days in the next
23 week, which day would be better. And I told him to
24 pick a date, it didn't matter to me which day it

1 was, nine o'clock would be fine, and I would meet
2 him there on the site.

3 And then I believe the next e-mail that I
4 got from him, he inquired if I had a lawsuit pending
5 against USF&G. And I told him that I did, but the
6 only reason that I had filed the lawsuit was to
7 protect my rights under Massachusetts law, and that
8 I had always just preferred to settle this out and
9 get back to work and finish it.

10 And then he wrote back to me and told me
11 that he had been told by the surety that he could
12 not speak with me -- I don't know if it was speak
13 with me or deal with me, but basically he couldn't
14 deal with me while the lawsuit was pending.

15 And I wrote him back --

16 Q. Did that surprise you?

17 A. Yes. It deflated me.

18 Q. Did you think that you could file a lawsuit
19 for unfair and deceptive trade practices against
20 USF&G and then continue to do business directly with
21 it and a company like Lovett Silverman? Was that
22 what your expectation was?

23 MR. MELTZER: Objection.

24 A. My expectation was that at some time, that

1 someone would have to sit down and speak with me
2 about my claims against USF&G.

3 Q. In the lawsuit?

4 A. No. That at some time, because even if I
5 had filed a lawsuit -- and this is just my
6 understanding, and I may be wrong -- but my
7 understanding is that I had never been released from
8 my contractual duties for this job, and they were
9 still going to have to deal with me one way or
10 another. They were going to have to fire me or they
11 were going to have to remove me somehow, or they
12 were going to have to sit down and say, "Okay, let's
13 look at what you've got and see if we can resolve
14 this without having to go through all this."

15 And --

16 Q. But you did get an answer to -- you did get
17 a response through the mechanism that you started of
18 the lawsuit, right? You got an answer to your
19 complaint?

20 A. At the time that I --

21 MR. MELTZER: Objection.

22 THE WITNESS: I'm sorry.

23 MR. MELTZER: You can answer.

24 Q. You did get a response. You said you

1 expected a response, and you filed the lawsuit and
2 you got a response, correct?

3 A. At that time I don't believe I had a
4 response.

5 Q. From USF&G?

6 A. I don't think I had a response. I think at
7 that time, sometime in April or maybe May, USF&G
8 removed the case to the Federal Court, and then it
9 just sat there, and I don't know how long it takes
10 to read these things, but it took them six months to
11 read this.

12 Q. The judge or the court?

13 A. Whoever, I don't know who reads it, and to
14 make the determination. But I don't believe that
15 there was any response to it at first, other than to
16 try to remove it. I'm not absolutely certain, but
17 from my knowledge, there wasn't anything.

18 Did you want me to continue on with the
19 e-mail --

20 Q. Certainly. So I think I asked you the
21 question -- I will ask you this question about your
22 first conversation with Mr. Bullock. When Mr.
23 Bullock told you that he was surprised that you were
24 interested in continuing to do business with USF&G

1 at the site, do you have an understanding as to why
2 he was surprised?

3 MR. MELTZER: Objection.

4 A. I don't recall having any opinion of why he
5 might have been surprised.

6 Q. It didn't occur to you that it might be
7 because you had filed this breach of contract and
8 deceptive trade practices claim against USF&G?

9 MR. MELTZER: Objection.

10 A. No, because of the continuation of the
11 conversation. He said to me that he preferred to
12 ratify the people that were, you know, involved with
13 the project and that it would be beneficial to
14 ratify me to get this work going.

15 Q. And then at a later point in these e-mail
16 exchanges, he asked you about whether there was a
17 lawsuit or not?

18 A. Yes, he did.

19 Q. And then what happened next?

20 A. I wrote him back and I told him that I was
21 sorry to hear that this was the case, because it had
22 always been my intention -- the only thing I ever
23 wanted to do was to go back to the job and finish
24 this job, and that the only reason that I filed the

1 lawsuit was because I had had no response from
2 anyone involved on the other side, and that to
3 protect my rights under Massachusetts law was the
4 only reason that I filed this, and that it was a
5 shame that two sides couldn't sit down and have a
6 conversation, just like this.

7 I mean, you've got your job to do, I
8 understand that, but we can sit here, and we can be
9 civil about it, and we can speak and we can see if
10 we can find, you know, a common ground.

11 Q. I understand. I think you told me -- we'll
12 take a second and we can find those e-mails, and it
13 will help the conversation. I think I have them
14 all.

15 MS. BROWN: We can mark them all as Exhibit
16 75.

17 (Document marked as Exhibit 75
18 for identification)

19 Q. Actually, Mr. Matthews, as you can see from
20 these e-mails, if we look at the top, I think it
21 looks like we see on Page 1, Mr. Bullock asks you to
22 send nine items, and you respond about the -- we'll
23 just go through these quickly, if you don't mind.
24 We don't need to take a lot of time with them.

1 You respond that you are not sure you
2 really want to send this through the fax machine,
3 just as we were just talking about. And then as you
4 stated, Mr. Bullock says, "I can meet with you
5 either Tuesday or Wednesday of next week," and you
6 say, "Either day would be fine."

7 And then on the third stapled set of
8 e-mails that we have collectively marked here as
9 Exhibit 75, Bob says, "Neal, we checked with the
10 surety, and we were told we cannot deal with
11 Landworks while the legal case is pending." And
12 then you wrote a response at the top of the page,
13 Friday, August 19th, "Dear Mr. Bullock, I'm sorry to
14 hear that."

15 I wanted to ask you a couple of questions
16 about this response, if you would be so kind.

17 A. Sure.

18 Q. "I felt that I could have provided
19 information and service to St. Paul that would have
20 saved them expense in completing the project. There
21 were many things in the actions of the Town of
22 Shrewsbury and Jackson Construction Company that
23 should have been corrected before the project moved
24 forward."

1 Do you remember what you were referring to
2 when you said that?

3 A. Yes.

4 Q. And what was that?

5 A. The relationship between Jackson and the
6 Town had deteriorated to the point -- I think if you
7 look at CTM's deficiency and job meeting notes, you
8 will see that there is a deterioration in the
9 relationship of the two working together. It became
10 adversarial in the end.

11 The Town was becoming more adversarial to
12 everyone involved in the project, in that any
13 concerns brought up to them about -- I'll just use
14 an item -- inside the building, because I said in
15 many of these meetings that the hood ventilators for
16 ventilation of the building became just a long,
17 drawn-out intransigence on both sides, because
18 neither one would -- they'd just sit and say, "We
19 don't know exactly what you want," and the Town
20 would say, "We don't care if you don't know what we
21 want. You're supposed to put it in. You're
22 supposed to know."

23 Jackson was working out of sequence, a
24 logical sequence of work. That was causing problems

1 in site work, and they were not providing
2 information that was needed to complete site work in
3 a timely fashion. And Jackson was using extortion,
4 for lack of a better word, to --

5 Q. Well, that's a very weighted word. I mean,
6 is that really the word you want to use?

7 A. Yes, it is, because I don't use it lightly.

8 Q. What does it mean to you, "extortion"?

9 A. Extortion would be to me that -- I'll give
10 you an instance. There was a change that they
11 wanted to make; they wanted to bring a conduit out
12 of the side of the shop area and run it into the
13 area where the new ticket booth would be placed. It
14 was not the area that it was originally to be placed
15 in. We had already run the conduit from the
16 original areas.

17 They would not provide a change order for
18 doing it. And so to get it installed, they said
19 plainly, "If you want to see any more payment,
20 you're going to put the conduit in." I would
21 consider that extortion.

22 Q. In your next sentence, and this is
23 consistent with what you've been saying, "It is
24 unfortunate that the surety did not respond to me,"

1 I think you meant to say, "and my lawyer's numerous
2 inquiries concerning Jackson's refusal to pay for
3 work that was requested and completed. Much of the
4 work was billable to the Town of Shrewsbury."

5 What is that a reference to, that much of
6 the work was billable to the Town of Shrewsbury?

7 A. There were several change orders that had
8 been given to Jackson the previous year, the ones
9 that I had spoke to earlier about sitting down in
10 the Thanksgiving meeting with them, of going over,
11 that were billable to the Town of Shrewsbury. And
12 as of this date right here, I had seen no evidence
13 that those bills had actually been turned in to the
14 Town for payment.

15 Q. Okay. Now, in the next set of e-mails, we
16 have a response from Bob to you, "Neal, We are
17 willing to discuss this with you, but in light of
18 the lawsuit, discussion should go through the
19 attorneys."

20 A. I'm sorry. Which --

21 Q. If you go to the next set. You see this is
22 your e-mail we were just reading, and here is the
23 response. I am asking you if you recall that
24 response.

1 A. Yes.

2 Q. Did you understand what he was saying, that
3 because of the lawsuit, discussions needed to go
4 through attorneys?

5 A. In my mind it was so that he didn't get
6 himself into trouble, he needed to have, like, the
7 attorney for USF&G present to have any discussion.

8 Q. Did you think --

9 A. That was just my --

10 Q. Your opinion?

11 A. My opinion of it.

12 Q. But you didn't think that was unreasonable
13 on its face?

14 A. No. And I think that, you know, my
15 response to him was fairly close after that, that I
16 had written to him to suggest that I -- that Mr.
17 Bullock and myself, and the attorneys for St. Paul
18 and my attorney, you know, meet at the end of the
19 month at a time that would be convenient for them,
20 at Shrewsbury Middle School, to see if we could work
21 this out, and resolve -- by resolve the matter, I
22 meant all of it, resolve it so that we could do away
23 with it.

24 Q. And, by the way, do you see in Mr.

1 Bullock's e-mail to you that he has copied a Russ
2 Fuller?

3 A. Yes.

4 Q. Do you know who Russ Fuller is?

5 A. No, I don't.

6 Q. Does it refresh your recollection if I tell
7 you that he is an attorney for USF&G?

8 A. Someone may have told me that before,
9 because I had an idea that he might have been an
10 attorney for USF&G. I think that when I saw it up
11 there, I figured that must have been who it was.

12 Q. Now, if we go to the next stapled set of
13 documents, you see Bob's response back to you.
14 "Neal, I will pass this suggestion along to Russ
15 Fuller at St. Paul Travelers." Do you see that?

16 A. Yes. I do.

17 Q. Now, at this point, you had not named
18 Lovett Silverman or had you named -- you had not
19 named Lovett Silverman as a Defendant in this case,
20 had you?

21 A. No, I had not.

22 Q. And did you have an understanding that
23 Lovett Silverman worked under contract with the
24 surety?

1 A. I wasn't certain what the working
2 relationship was now with the surety.

3 Q. And did you have an understanding as to who
4 called the shots, whether Bob Bullock called the
5 shots or the surety called the shots as to resolving
6 this dispute with you and how this dispute with you
7 would be resolved?

8 MR. MELTZER: Objection as to form.

9 Q. I mean, can you see reading this e-mail
10 that Mr. Bullock is saying that St. Paul is the
11 decision maker, and not Lovett Silverman, and he
12 must pass this on to St. Paul?

13 MR. MELTZER: Objection.

14 A. In my discussion with him and my subsequent
15 e-mails to him, in my opinion, Lovett Silverman was
16 charged with finding out, you know, what were the
17 disputes and ratifying the subcontractors if they,
18 you know, wanted to be ratified, and working this
19 out for St. Paul's.

20 But other than that, I'm not certain -- in
21 my opinion they were the ones that were the lead in
22 being able to sort through the mess of the Jackson
23 failure and ratifying people. They were the only
24 people that I knew to talk to to get the process

1 going.

2 Q. And when we were at the depositions of the
3 Lovett Silverman people, your attorney showed them
4 the e-mails from the surety, instructing them not to
5 deal with you. Do you remember those e-mails?

6 A. Yes.

7 Q. So in hindsight --

8 A. I'm sorry. I'm sorry. Would you repeat
9 that.

10 Q. At the time of these e-mails, there were
11 other e-mails that went from the surety to Lovett
12 Silverman?

13 A. Yes.

14 Q. Saying -- instructing Mr. Bullock at Lovett
15 Silverman not to deal with you directly, and
16 instructing Lovett Silverman to tell you that
17 communications had to go through the lawyers because
18 of the lawsuit. Do you remember seeing those
19 e-mails --

20 MR. MELTZER: Objection.

21 Q. -- at the Lovett Silverman depositions?

22 A. I don't remember that that way. What I
23 remember -- what really sticks out in my mind about
24 the set of e-mails that dealt with this was an

1 e-mail that was written by somebody to Bob Bullock
2 in which he asked about Landworks, and "Is there any
3 reason why we're not pursuing this guy?"

4 And someone writes back that Russ Fuller
5 has a problem with this guy. And then he states
6 that -- he says something to the effect that "Then I
7 will tell him that we can't deal with him as long as
8 the lawsuit is pending." And then someone else
9 writes back and says, "Don't do that if you have not
10 already done so."

11 So through all this my feeling was that,
12 you know, these were people that I had dealt with
13 before. I had seen, you know, the first
14 ratification.

15 Q. Yes.

16 A. And that these were the people that I
17 needed to talk to, to go through. And to be taken
18 from a point of where it looked like they were going
19 to -- let's get this resolved and everything, and
20 then all of a sudden saying they can't talk to me,
21 and I think even after the e-mails that I had
22 written about this where I suggested we meet with
23 him, I think I wrote him one more e-mail that said,
24 "Did you pass the information along, and will they

1 meet?", and then finding out later on that this was
2 not really the case.

3 It wasn't the case that they couldn't deal
4 with me. It was a case that one person, who I have
5 never met in my life, as far as I know, has a
6 problem with me, and --

7 Q. That would be Russ Fuller, the lawyer?

8 A. Russ Fuller or whoever it was -- I'm not
9 certain if -- I know that in one e-mail it says
10 that, I think it was, "Russ Fuller has a problem
11 with this guy." It was in response to an e-mail
12 from Mr. Bullock saying, "Why aren't we pursuing
13 this guy?" And he says, well, I think it was, "Russ
14 Fuller has a problem with this guy."

15 And then to find that out later on, just --
16 you know, it just added more to the fact that the
17 only thing we had to do was to talk about this, and
18 we could have resolved it, and nobody would talk to
19 me.

20 And to have everything, you know, my life,
21 sitting there put on hold for three years because
22 one person will not talk to me -- lawsuits can be
23 resolved every day. They can be resolved without
24 having to go through depositions and courtrooms and

1 anything else if just they would talk. And the only
2 thing he had to tell me then was give me an honest
3 answer, and I don't think that he gave me an honest
4 answer.

5 THE WITNESS: If you don't mind, can I have
6 just like a minute or two.

7 MS. BROWN: Yes, we'll take a short break.

8 (Recess)

9 BY MS. BROWN:

10 Q. Did you think that Landworks and the surety
11 were legally obligated to ratify your contract, your
12 Jackson contract?

13 MR. MELTZER: Objection. Answer if you
14 understand the question.

15 A. Actually, I considered I already had a
16 contract with the surety. That's what I considered
17 the ratification agreement to be, was a contract
18 with the surety to proceed and finish the work on
19 the Shrewsbury Middle School.

20 Q. Which contract are you referring to?

21 A. I'm talking about the ratification
22 agreement.

23 Q. After the Standen failure?

24 A. After the Standen failure, Lovett Silverman

1 had ratified me. And my understanding of that,
2 which I don't know the legal stuff, but my
3 understanding of that was that was basically going
4 to be my contract to finish the job, the
5 ratification agreement.

6 Q. So you didn't believe that you needed a new
7 contract after Jackson failed?

8 A. No, not really. I believe that I had one
9 that had been -- that had been negotiated before.
10 But I had never been through this before, so I
11 didn't -- I was sort of -- I didn't know, but I felt
12 that I had a contract already with USF&G, or St.
13 Paul's, whoever, that was the ratification
14 agreement, that that was my contract with them.
15 So...

16 Q. Now, just before we took our break, we were
17 finishing up this series of e-mails, and I believe
18 you made reference -- Mr. Bullock said to you,
19 "Neal, I will pass the suggestion along to Russ
20 Fuller at St. Paul Travelers." And then you
21 responded back a few days later, "Dear Mr. Bullock,
22 Did you pass on my request... and if so, what was
23 the response?"

24 And Mr. Bullock says, "See my response to

1 you of Friday, August 19th." This is the final
2 page. "This matter has been passed to the surety's
3 attorney. The communication will come through the
4 attorneys. Thank you." And I think you testified
5 about your disappointment about receiving this
6 response.

7 A. Yes.

8 Q. Now, do you believe that Mr. Bullock lied
9 to you about anything here?

10 A. I believe that he lied to me -- that to me
11 is a strong word also, so let me restate that. I
12 don't believe that Mr. Bullock was truthful,
13 completely truthful to me, when he stated the
14 reasons why he could not deal with me.

15 Q. What do you think --

16 A. I don't believe -- I have no reason to
17 suspect that his last response on Tuesday, August
18 23rd, was not being truthful, that he had already
19 passed this on to the attorneys. But prior to that,
20 I think that the initial statement, that he said
21 that he couldn't deal with me because of the pending
22 lawsuit, was untruthful.

23 Q. And what was the truth, in your view?

24 A. That he couldn't deal with me because Russ

1 Fuller had a problem with me.

2 Q. Any other untruths that you believe you
3 were told by Mr. Bullock?

4 A. At this time I can't think of any more, no.

5 Q. Did you have any communications with anyone
6 else at Lovett Silverman? And now I'm referring not
7 to at the time of the ratification of the contract
8 you had with Standen, but I'm referring to the post-
9 Jackson-failure time frame.

10 A. Mr. Bullock was, as far as I know, Mr.
11 Bullock was the only one that I had contact with.
12 He was the only one at that time who spoke to me or
13 communicated to me in e-mail also.

14 Q. Do you believe Lovett Silverman did
15 anything wrong in how Lovett Silverman handled the
16 Jackson failure and dealt with you on the Jackson
17 failure? Should they have done something different?

18 MR. MELTZER: Objection.

19 A. Yes.

20 Q. What did Lovett Silverman do that was wrong
21 in your mind?

22 A. I think that they could have taken my
23 information and that they could have looked at it
24 for the validity of it and could have communicated

1 to the surety that there was a legitimate claim here
2 and that maybe we should speak with them. And this
3 is only, now I'm talking about, the portion of the
4 second ratification process. This doesn't go any
5 further than that point right there. There are
6 other issues later.

7 Q. And what else should they have done --
8 we're talking about this time frame in August of
9 2005, the time of these e-mails that you believe
10 that Lovett Silverman was wrong in their conduct and
11 that they should have done what you just described.
12 Is there anything else that you think Lovett
13 Silverman did wrong and should have done
14 differently?

15 A. I can't think of anything at this point in
16 time.

17 Q. Did there come another point in time when
18 you believe Lovett Silverman did something wrong?

19 A. Yes.

20 Q. And what was that?

21 A. That would have been in early 2006. I'm
22 not certain what the dates are. But there are
23 e-mails in which attorneys for the surety asked
24 Lovett Silverman to help prepare a counterclaim